

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JUNE 18, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Ted Yamamura

Ms. Lynn McCrory
Ms. Kathy Inouye
Mr. Toby Martyn (arrived at 10:15 a.m.)

STAFF

Ms. Dede Mamiya, Land Division
Mr. Sam Lemmo, OCCL
Mr. Paul Conry, DOFAW
Mr. Dan Davidson, Deputy

Ms. Karen Motosue, State Parks
Mr. Michael Buck, DOFAW
Mr. Andrew Monden, Engineering

OTHER

Mr. Jay Paige, Deputy Attorney General
Mr. Daryl Oliveira, D-5
Mr. Lance Marugame, E-1
Ms. Candy Lake, D-11
Mr. Makakaualii Rego, D-11
Mr. Mike Holcomb, D-11
Mr. Richard Barboza, D-11
Mr. David Fell, D-11
Ms. Ellen Yee, D-11
Mr. Allan Takemoto, D-11
Ms. Lynn Pendragon, D-11
Ms. Cindy Comber, D-11

Mr. Roland Sagum, E-2 & E-3
Mr. Anders Lyons, C-2
Mr. Bernice Bowers, D-11
Ms. Katya Dela Matier, D-11
Mr. Glen Griffin, D-11
Ms. Robin Peterson, D-11
Ms. Rosina Ho, D-11
Mr. Kyle Ushijima, D-11
Ms. Eve Anderson, D-11
Mr. Will Pendragon, D-11
Mr. Don Hutton, D-11

Mr. Dennis Kanahale, D-11
Mr. Larry Mercera, D-11

Mr. Terrance Rodrigues, D-11

{Note: Language for deletion is [bracketed], new/add is underlined}

Item A-1: Minutes of May 24, 2004

Motion to defer

Unanimously approved to defer (McCrory/Inouye).

Item A-2: Minutes of June 4, 2004

The Board made the following changes

Page 7, last paragraph, second line

“She communicated her request for a contested case hearing might have arrived late as there is only one mailing each week from Molokai.”

Page 1, “Others” section

Mr. ~~[Ron]~~ Bob McGraw, D-11

Mr. Carl Morita, D-2

Ms. Matsuko Matsumoto, D-2

Mr. Robin Foster, D-6

Page 8, first paragraph, first line

“She told the Board the reason for her request is she is a native tenant on a [~~awapua’a~~] ahupua’a”

Page 12, second paragraph, second sentence

“Chairperson Young made [~~in~~] it known he would . . .”

Page 5, third paragraph

“Ms. Mamiya made it known the subject easement [~~will be~~] is used for maintenance of the roadway, walkway and a portion of the residence. Ms. [~~Vistousek~~] Vitousek the current owner has entered into . . .”

Page 6, first paragraph, first line

Mr. Carl Morita. Ms. Matsumoto’s son told the Board”

Unanimously approved as amended (McCrory/Inouye).

Item D-5: Set Aside to county of Hawaii for Public Safety and Recreational Purposes, Pahoa, Puna, Hawaii, TMK: (3) 1-5-7:17, 62, 63, 64, 65 and 66.

Dede Mamiya , Administrator of the Land Division appeared before the Board and communicated this submittal is a request to set aside land to the County of Hawaii for Public Safety and Recreational Purposes in Pahoa. The subject lands were formally under General Lease #3949 to Big Island Floral, which expired in December 2000. Since the expiration of the lease, the Land Division has not received any interest in this property other than non-Agricultural use, which would require a zoning change. The County of Hawaii has requested a set aside due to the tremendous population growth in the Puna area. The increased population necessitates the need for a new public safety site including a new fire station and police substation. In the future the County of Hawaii might look at constructing a recreational facility (Gymnasium) on the subject site. This action was circulated for comment and staff only received comment from the Office of Hawaiian Affairs (OHA). OHA questioned whether the subject lands were ceded lands. Ms. Mamiya recommended the Board approve and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited in the submittal.

Daryl Oliveira was present.

Unanimously approved as submitted (Johns/Yamamura).

Item E-2: Assignment of Kokee Lunchwagon Concession Contract, Contract No. CF-01-038-SW from Kokee Ventures, Inc. to The Lodge at Kokee, LLC.

Item E-3: Approval to Assign Kokee Lodge Concession Lease to The Lodge at Kokee, LLC from Kikiaola Realty, LLC, Kokee State Park, Kauai.

Karen Motosue, Assistant Administrator of State Parks made it known items E-2 and E-3 are companions in the sense that State Parks is seeking the Board's approval to assign the Kokee Lodge and Lunchwagon concession contract from Kokee Ventures to The Lodge at Kokee. Ms. Motosue reminded the board on May 14, staff conducted a sealed bid process in which the highest bidder for the Lodge was Kikiaola Realty, LLC. This Board action also seeks to request the lunchwagon concession contract, which is month-to month permit be transferred from Kokee Ventures to The Lodge at Kokee. Ms. Motosue recommended the Board approve the assignment of the Lunchwagon Concession Agreement to The Lodge at Kokee, LLC, assignee from Kikiaola Realty, LLC subject to the same terms and conditions as per the existing concession Agreement.

Roland Sagum representing The Lodge at Kokee was present.

Unanimously approved as submitted (McCrory/Inouye).

Item E-1: Request to Use the Wahiawa Freshwater State Recreation Area, Oahu, for “Day at Lake Wilson”

Ms. Motosue told the Board they are requesting a Special Use Permit for a one day event on Sunday, September 12, 2004 at Wahiawa Freshwater State Recreation Area to educate the community about Lake Wilson. Various community associations are sponsoring the event. It was noted on last years permit the Board allowed the applicant to sell or accept donations for bottled drinks. The funds collected will be used to defray fuel cost, advertisement, prizes and lunches for the volunteers. Ms. Motosue recommended the Board approve the issuance of a Special Use Permit for a “Day at Lake Wilson” at Wahiawa Freshwater State Recreation Area.

Lance Marugame was present.

The Board amended the Recommendation Section by deleting condition 1)

~~1. Not allow any exchange of monies at Wahiawa Freshwater State Recreation Area;~~

Unanimously approved as amended (Inouye/McCrory).

Item E-4: Approval to publish and award the Wailua Marina Restaurant Concession Lease and Commercial Concession Space via sealed bid process to the highest bidder, Wailua River State Park.

Ms. Motosue came forward and recommended the Board approve to publish and award the Wailua Marina Concession lease and commercial concession via sealed bids.

Member McCrory questioned staff as to why staff is adjusting the concession lease every two years and reappraising on the tenth year. Ms. Motosue clarified this by stating staff is requesting a rent step-up as opposed to a fixed rent amount. Member McCrory and Yamamura noted they did not understand what State Parks is trying to accomplish with regards to the adjustment of rent every two years.

The Board made the following changes to the Recommendation Section

1. Third Paragraph

“The bid for Building “B’ covers the restaurant space with a bid upset minimum monthly guaranteed rent of \$.40 per square foot, versus minimum percentage rent of 5% of kitchen sales revenue and 10% of bar revenue, whichever is greater. The concession lease term shall be 15 years ~~[adjusting]~~ with a step-up every 2 years with a ~~[reappraisal]~~ reopening in the tenth year. The tenant shall contribute a minimum of \$600,000 in tenant improvements to be completed within 9 months of lease commencement. The minimum monthly rent shall be waived for the first six months of the lease or until a certificate of occupancy is issued whichever occurs first.”

Unanimously approved as amended (McCrory/Johns).

Item D-9: Issuance of Perpetual Non-Exclusive Easement for Access and Utility Purposes, Western United Life Assurance Company, Mokuleia, Waialua, Oahu, TMK: (1) 6-8-1, 6-8-2 & 6-8-3.

Motion to Defer

Unanimously approved to defer (Johns/Yamamura).

Item K-3: Enforcement File No. OA-04-28 Regarding Newtown Estates Community Association (NECA) Land, 98-456 Kaahele Street, Aiea, Oahu, 96701, TMK: (1) 9-8-073-003.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands appeared before the Board and informed them that applicant's attorney has requested a deferral of this item. Mr. Lemmo noted he has no objections to this request.

Motion to Defer

Unanimously approved to defer (Inouye/McCrory).

Item C-3: Request for Approval of a Memorandum of Agreement Between the Maui Coastal Land Trust, The County of Maui and DLNR for the Purchase and Management of the Waihe'e Coastal Dunes Property, Maui and Approval of a Conservation Easement for the Property.

Michael Buck, Administrator for the Division of Forestry and Wildlife together with Paul Conry, Wildlife Program Manager appeared before the Board. Mr. Buck communicated his desire for an approval of a Memorandum of Agreement between Maui Coastal Land Trust, Maui County and the DLNR. He also requested an approval for a Conservation Easement to protect the property in perpetuity. Under this agreement the Department will provide \$2,000,000 for the purchase of the subject property, the County of Maui will provide \$1,810,523 in funding for the acquisition and Maui Coastal Land Trust will contribute \$989,477 towards the purchase of the parcel. This request will conserve and protect over 24 acres of coastal wetlands, 103 acres of dune ecosystem and over one and a half miles of marine shoreline and more than 8 acres of riparian habitat for the recovery of native birds and native vegetation. Mr. Buck recommended the Board approve the Memorandum of Agreement, the Conveyance of the Deed of Conservation Easement and Development Rights and authorize the Chairperson to provide \$2,000,000 in federal funds to Maui Coastal Land Trust for the acquisition of the Waihee Coastal Dunes and Wetlands property.

Member Yamamura made it known that the area contains a large beach and he was concerned with public access to the area. Mr. Buck confirmed that the public will continue to have access to the beach.

Unanimously approved as submitted (Yamamura/Johns).

Item C-2: Kanepuu Preserve/Renewal for Continued Enrollment in the Natural Area Partnership Program.

Mr. Buck reminded the Board the Kanepuu Preserve comprises approximately 590 acres of land northwest of Lanai City. Castle and Cook own the lands and they have in turn issued and finalized a perpetual conservation easement with The Nature Conservancy of Hawaii (TNC) to manage the area. Mr. Buck recommended the Board continue approval to the applicants for the Kaanepuu Long-Range Management Plan, authorize the continued funding for this project and direct the Division of Forestry and Wildlife to encumber the agreement for fiscal years 2005-2010.

Anders Lyons representing The Nature Conservancy addressed the Board's questions with regards to the management of the area indicating that TNC's Maui staff, which encompasses seven individuals, is currently doing the management. He went on to say his staff does quarterly, weeklong trips to Kanepuu. Mr. Lyons assured the Board TNC is able to implement the management plan for Kanepuu.

Unanimously approved as submitted (Yamamura/Johns).

Item C-1: Request for Immediate Right-of-Entry to Conduct Conservation Management on Unencumbered State Lands at Kanaio and to Conduct a Public Hearing Regarding Designation of Same into the Natural Area Reserve System.

Mr. Buck conveyed the subject parcel is currently unencumbered and was previously leased to Ulupalakua Ranch for cattle grazing. He went on to say the division has received federal funding which they have used to construct fencing in the upper portion of Kanaio Natural Area Reserve. Mr. Buck recommended the Board grant an immediate right of entry to the Division of Forestry and Wildlife to conduct conservation management and to grant permission to conduct a public hearing on Maui regarding Designation of Unencumbered State lands at Kanaio.

Unanimously approved as submitted (Yamamura/Johns).

Item K-1: Conservation District Use Application (CDUA) OA-3174 to Make Roadway Improvements to Stabilize Kalaiohua Place.

Mr. Lemmo informed the Board the applicant is seeking permission to restore the pavement width of Kalaiohua Place for safe passage of one-way traffic. The proposed project will include a turn around area as well as the replacement of three overhead poles in the area. An Environmental Assessment was done and published in November 2003. Mr. Lemmo recommended the Board approve this application to restore the pavement width of Kalaiohua Place for safe passage of one-way traffic, provide stabilization against further erosion, construct a vehicle pull out area to accommodate opposite traffic and replace three overhead poles subject to the conditions listed in staff's submittal.

Unanimously approved as submitted (Inouye/McCrory).

Item D-11: Request for Waiver pursuant to HRS 171-43.1, for property located at 41-919 Kaulukanu St., Waimanalo, Hawaii, Pasture Lease, GL-3861, TMK: 141-27-16.

Dan Davidson, Deputy Director of Land presented the above submittal. He reminded the Board this item previously came before them and a decision was made at that meeting. Mr. Davidson went on to say that this lease is being schedule for public auction at the end of the month. He made it known the applicant, the Sylvester Foundation has made a request to appear before the Board to discuss The Foundations request to acquire the subject lands by direct negotiation (due to their non-profit status) pursuant to Hawaii Revised Statute 171-43.1. Making no recommendation, Mr. Davidson turned over the mic for public testimony.

Member Inouye questioned if this item could be brought back to the Board. She made reference to a past issue in which that submittal could not be brought back to the Board unless one of the Board members who voted yes decided to change his/her vote.

Ms. Mamiya clarified that the last time The Sylvester Foundation appeared before the Board was to request for a new lease. At that meeting the Board chose to deny this request and put the lease up for public auction.

Deputy Attorney General, Jay Paige felt this issue followed the previous pattern of the previous Board submittal.

Motion made at 9:41 a.m. by Member Johns and second by Member Inouye to move into executive session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

Unanimously approved to move into Executive Session (Johns/Inouye).

The meeting was reconvened at 10:00 a.m.

Member Johns made a motion to allow the Board to hear testimony on item D-11. He informed those present this issue could be considered a new item as it could be viewed as a request for a waiver from a new entity or it could be considered a reconsideration of the Board's actions of last August.

Motion made to hear item D-11

Unanimously approved to hear item D-11 (Johns/McCrory).

Candy Lake, President of the Sylvester Foundation appeared before the Board with the hope of negotiating a lease for the subject property by direct negotiations.

Bernice Bowers, Board member and Director of The Sylvester Foundation (Foundation) emphasized to the Board members that the Foundation comes here today with the perspective of moving forward and continuing to provide services to the community. She notes the Foundation's intention to pay market rent for the lease of the subject parcel. She made it known the Foundation is continuing to look at other land options to relocate the Foundation. They have consulted with Castle and Cooke, Kaneohe Ranch, Campbell Estate as well as other private land owners. Ms. Bowers notes the Foundation has been focusing their efforts on relocating burial colonies away from retail centers and residential areas. She also spoke of her efforts in working with Reservists and Guardsmen (who are called to duty) in the placement of their pets whether it is a temporary or permanent home. Ms. Bowers asked the Board to look at Hawaii Revised Statute 171-43.1 if it might allow the Foundation to continue operation at their present location. If the Board can come up with another option with regards to a location, Ms. Bowers asked for some extra time to relocate their operation.

Ms. Lake read from portions of a written testimony submitted by Makakaulii Rego. Mr. Rego, Veteran's Improvement Program (VIP) Advisor went on to explain the purpose of his organization. He communicated the major purpose of the organization is to serve as an advocate for disabled veterans and provide them with diverse and enriching opportunities while encouraging socialization and integration into the mainstream of society. He conveyed the wishes of the VIP members to participate in a project, which dealt with animals as they did not have a pet therapy program in their area. Mr. Rego met with Candy Belmar and took a tour of the grounds. The VIP's adopted a horse corral and eventually turned it into a dog corral. The group worked on cleaning this area and doing necessary repairs and maintenance. Upon hearing that the Foundation's lease would not be renewed the members of the VIP questioned what will happen to these animals at the Foundation. Mr. Rego stated how the animals provide therapy for their members. He feels that animals give unconditional love to people. In closing Mr. Rego asked the Board to please reconsider renewing the subject lease.

Member Inouye questioned Ms. Bowers as to how long she been involved with the Sylvester Foundation as to which she replied a 1-1/2 years. Ms. Bowers went on to explain how the Foundation receives its funding and spoke about their budget. With regards to past delinquencies and default notices, Ms. Bowers states there is some question as to why the defaults occurred. She also pointed out some of the defaults go back two years prior to Ms. Lake occupying the land. As for the other defaults Ms. Bowers felt there were problems in communicating with the Land Division during the arbitration process, which resulted in these defaults. She pointed out much of the defaults involved retro-rent.

Katya DeLaMatier a volunteer with the Foundation spoke in support of the Sylvester Foundation. Ms. DeLaMatier read portions of her written testimony. She communicated through the lease obtained from DLNR they have been able to provide a horse ranch for eight years and supported the community with an animal sanctuary directly helping residents and their animals from all islands. Ms. DeLaMatier spoke of her efforts in working with the Kauai and Molokai Humane Societies as well as elder community members. She asked the Board to consider HRS 171-43.1 or any other options that would allow The Sylvester Foundation to continue operation.

Mike Holcomb a member of The Sylvester Foundation Board testified in support of the Foundation. Mr. Holcomb spoke of the services the Foundation has and is providing to the community: removing abandoned and abused animals from public areas, large retail areas, residential areas and spaying and neutering thousands of feral animals, rehabilitating injured horses and securing homes for pets of deployed military and local families on every island. He told the Board their mission is to heal animals that are hurt, abandoned, or abused; to share lessons of stewardship of land and animals; and to help strengthen Hawaii's people in the process. Mr. Holcomb asked the Board to please help their organization find a way to continue their work.

Member Inouye questioned Mr. Holcomb how long has he been a member of the Board to which he replied a year in a half.

For the record, Member Inouye made it known she had a list of the chronology of events that have occurred with regards to this lease. She indicated the lease was dated November 8, 1995, and she has a list of defaults dating back to 1997. Ms. Lake disputed the defaults saying the defaults were from a previous tenant. When Member Inouye confirmed these defaults were for the time period Ms. Lake held the lease, Ms. Lake noted the defaults in rent was due to an error on the department's part. Ms. Lake told the Board the Department was billing her for an appraised rent amount that was currently in arbitration. Ms. Mamiya stepped forward to make it clear that probably one notice of default was incorrectly sent to Ms. Lake but all of the other notices including the performance bond and the fire liability insurance defaults were correct. For the record, Ms. Inouye clarified that the statement made by Ms. Lake stating that the rental defaults belonged to the previous tenant was incorrect.

Ms. Bowers asked the Board for clarification as to how situations are handled when the amount of the rent is in arbitration. Ms. Mamiya told Ms. Bowers that there is a very specific process that is stated in the lease document that should be followed when the rent amount is in dispute. She went on to say if Ms. Lake disagreed with the State's appraisal she had the option of hiring her own appraiser and producing a report. Ms. Mamiya believes an appraiser was hired but he did not submit a report to the department.

Glen Griffin testified in support of the lease going out to public auction. As a potential bidder he reminded the Board the land is classified for intensive agriculture or pasture use and he does not believe the current lessee is using the land that way.

Ms. Mamiya made it known there are twenty-six applicants applying for the four leases. Out of those applicants nine were qualified and seven were bidding for this particular property. Ms. Lake noted The Sylvester Foundation submitted an application but they were disqualified and they have filed an appeal.

Richard Barboza testified in favor of the lease going out to public auction. He feels it is unfair if one property is being taken off of the auction as these lands are in demand. He spoke of the qualification process potential bidders had to go through to qualify to bid.

Robin Peterson a farmer testified in support of the lease going out to public auction. Ms. Peterson spoke of a visit she made to the adjacent parcel, which is owned by City and County. She let it be known she was attached by a pit bull that was on The Sylvester Foundation land but had the ability to reach the City and County land. Upon speaking with the former director of the Humane Society she was informed that there were numerous complaints about The Sylvester Foundation. She noted other people that planned on being at today's meeting to testify against The Sylvester Foundation did not come because they have been threatened. Ms. Peterson believes the Board has the duty and obligation to make sure the land is used for what its use is classified. Lastly, Ms. Peterson make it known the Humane Society does have it's own "Pets for Patriots" program which will take pets of those being deployed. So The Sylvester Foundation is not the only organization offering this service.

David Fell a qualified bidder testified in favor of the lease going out to public auction. Mr. fell communicated that sixty days ago he went out to the subject property with an appointment to view the land. After being handed a packet of information with letters in support of The Sylvester Foundation holding on to the lease, Mr. Fell was told by Ms. Lake that he would not be permitted to view the property as required by her lease. He believes that although The Sylvester Foundation is a very good idea on the surface, he thinks the execution may leave something to be desired. Mr. Fell feels the Foundation is callously manipulating the system in hopes of retaining their current lease.

Rosina Ho a resident of Waimanalo testified in favor of the lease going out to public auction. She believes that individuals who wrote letters in support of the Foundation did so without hearing both sides of the issue. Ms. Ho believes that everyone in the State of Hawaii should be forced to abide by the rules set forth.

Ellen Yee a State lessee testified in favor of the lease going out to public auction. She spoke of a time in which she was charged with retroactive rent because the appraisal of the lease was not done on time. Although she was charged retroactive rent for six years she believes it was worth paying the money, as it is a privilege to farm in Waimanalo. She pleaded for the subject land to remain agriculture if not the land will be lost forever.

Kyle Ushijima a qualified bidder and one of the owners of Landscape Hawaii testified in favor of the lease going out to public auction. He felt it was necessary to fight for the land to remain agriculture. He believes the land is not being used for its intended purpose.

Allan Takemoto, Executive Director for the Hawaii Farm Bureau Federation testified in support of the lease going out to public auction. He feels if the Board allows the Foundation to extend their lease it jeopardizes the integrity of the State's agriculture lease program which was set up to protect against abuse of State Ag lands. He asked the Board to deny the request before them today.

Eve Anderson a resident of Waimanalo testified in support of the lease going out to public auction. She is against the request before the Board and feels we must follow the rules set forth. She asked the Board to put the lease out to auction and give all farmers a fair chance.

Lynn Pendragon a resident of Kailua testified in support of this submittal. She spoke of the wonderful care being given by the Foundation to various animals. Ms. Pendragon believes the land occupied by the Foundation is ideal as it is roomy enough for the animals while at the same time far enough away from the traffic as to not jeopardize the welfare of the animals. To the best of her knowledge, there are no lands that the Foundation could use to continue their work. She implored with the Board to remove the subject land from the public auction and to negotiate with the Foundation to allow them to lease the land at a nominal sum.

Will Pendragon a resident of Kailua testified in support of this submittal and The Sylvester Foundation. He spoke of the compassion administered by the volunteers at the Foundation. Mr. Pendragon asked the Board to allow The Sylvester Foundation to negotiate directly with the State for a new lease.

Cindy Comber testified in favor of the lease going out to public auction. She made the Board aware that she was able to view the subject land, which she believed was a monumental task. She noted there were three previous appointment to view the property, which were cancelled. On the last occasion she made it known an enforcement officer was present on the site visit carrying a gun and mace. Ms. Comber was told that some pit bulls were seen and the officer was there to basically protect people from the dogs. Ms. Comber went on to describe what she saw at the property. In closing she asked the Board to let the land remain agriculture and place it out to bid. She noted she has no personal interest in the property other than to see it remain Agriculture.

Don Hutton a volunteer at The Sylvester Foundation spoke in support of the Foundation and of the loving care given to the animals by volunteers at the Foundation. He informed those present the Foundation is a special area for HIV aids cats and are allowed to live their lives without pain and anguish.

Ms. Lake informed the Board they have been in communication with other landowners for a suitable site. She told the Board the land does not have to be located in Waimanalo but she'd prefer it. Ms Lake asked to address the issue that the Sylvester Foundation was uncooperative in showing the subject parcel to possible auction bidders. She let it be known after she spoke with the Lt. Governor's office she was told she should have a waiver signed by anyone who looked at the property so the Foundation wouldn't be responsible if anyone got hurt. She also made it known some of the site visits were cancelled due to the weather. Charlene Unoki confirmed there were a lot of confusion and miscommunications over setting up of site visits. Ms. Unoki communicated most of the potential bidders were able to view the property (route was determined by Ms. Lake) but there were still others who were not bale to view the property. Ms. Mamiya confirmed that Mr. Fell was not able to view the property. Ms. Lake felt that Mr. Fell was not happy with the route approved by Ms. Lake.

Dennis Kanahele came forward and spoke in support of the Sylvester Foundation. He feels the service the Foundation provides is something the community needs. He asked the Board to help Ms. Lake find some land to operate her business from. Mr. Kanahele spoke of the grave injustice done to the Hawaiians and questioned the State's ownership of the subject parcel.

Mr. Fell indicated his site visit of the subject parcel was limited to the public road except for one sort stretch on the second or third parcel in which he was allowed to go in about 25 yards. The balance of the property had to be viewed from the public road.

Terrance Rodrigues, owner of All Tree Service and a qualified bidder spoke in support of keeping the subject land designated agriculture.

Larry Mercera made it known he visited the property but was only able to view about twenty percent of the area because he was not allowed to go to most of the areas. He questioned the statement made by Ms. Lake in which she states there is only about six acres of usable land on the subject site. He spoke in support of finding another location for the Sylvester Foundation.

Mr. Davidson acknowledges he feels the subject land should go to public auction but he reiterated his commitment in helping the Sylvester Foundation secure a suitable site for their business. The Board had some concerns with the department aiding the Sylvester Foundation in locating another parcel as they have had a poor track record with regards to rental payments. The Board questioned Ms. Lake as to why she did not look for other possible sites. Ms. Lake responded that they assumed they would be able to bid for the subject site when it came up for auction.

Motion to deny waiver request and uphold the auction and timeline for the auction.

Unanimously approved to deny waiver request and uphold auction and the timeline for the auction. (McCrory/Inouye).

Item K-4: Second Time Extension Request for Conservation District Use Permit (CDUP) OA-3077 for Remington Single Family Residence.

Mr. Lemmo gave a brief background of this Conservation District Use Permit (CDUP). He reminded the Board the permit for this project was issued on June 14, 2002 subject to standard conditions and deadlines. A time extension was been granted on May 14, 2003. Mr. Lemmo indicated Mr. Remington, the applicant has been having some problems initiating construction due to the weather. Although Mr. Lemmo sympathizes with Mr. Remington's difficulties he believes the project should have commenced further. Mr. Lemmo recommended the Board approve this request to amend CDUP OA-3077 to provide that the permittee has until June 14, 2005 to initiate construction and until June 14, 2006 to complete construction of this single family residence. Mr. Lemmo also recommended that the applicant shall not receive any further time extensions for CDUP OA-3077.

The Board had some concerns with allowing Mr. Remington till June 14, 2005 to initiate construction. Mr. Lemmo spoke of the problems encountered by Mr. Remington in securing the necessary approvals.

Paul Remington came forward and informed the Board he is awaiting final Engineering approval as to the grading of a new retaining wall. Upon receiving Engineering's approval, Mr. Remington will need to resubmit his plans to the City and County of Honolulu (Planning

and Permitting) for final approval. Upon obtaining this approval, he told the Board he is ready to move ahead with construction as early as next week. The Board asked Mr. Remington if he would be agreeable to a sixty day time extension to initiate construction.

Mr. Lemmo approached the Board and made it known for the past fifteen years the State has had concerns regarding this lot because the lot is very difficult to develop. He spoke of permits being issued then expiring without construction being completed. He noted Mr. Remington is the latest in a line of developers attempting to develop this area

The Board made the following changes:

1. **“That Condition seven (7) of CDUP OA-3077 is amended to provide that the permittee has until [~~June 14, 2005~~] August 14, 2004 to initiate construction and one (1) year, until [~~June 14, 2006~~] August 14, 2005 to complete construction of the SFR;**
2. **Delete condition #2**

Unanimously approved as amended (Inouye/Yamamura).

Item K-2: Enforcement File No. HA-02-25 Regarding Alleged Unauthorized Construction of a Beach House Structure and Unauthorized Removal of Sixty (60) Hala Trees.

Mr. Lemmo indicated their office received a complaint regarding unauthorized construction of a beach house structure and the removal of sixty hala trees. The Division of Conservation and Resource Enforcement (DOCARE) conducted a site visit and made a report. Staff obtained statements from several parties that contradicted each other while trying to refute and clarify the violations. Mrs. Waters accepted responsibility for the removal of the hala trees but noted her instructions to the tree trimmers were to cut the bushes. On the other hand both Mr. Waters and Mrs. Waters acknowledge responsibility for construction of a beach house structure. Mr. Lemmo had some concerns with the tree cutting in this area as the area is a possible location of a habitat of endangered and threatened species. Mr. Lemmo pointed out he is in receipt of a letter from Mr. Waters attesting to his inability to pay the fines as he is unemployed. Mr. Lemmo went over the fines assessed to each of the parties and recommended the Board find Mr. Waters and Mrs. Waters in violation of HRS, Chapter 183C and HAR, Chapter 13-5 and is subject to the conditions listed in staff’s submittal.

The Board had concerns due to the divorce status of the parties and that the property may be sold in the future. Member McCrory asked to include a condition, which states if the subject property is sold within the next five (5) years the Board’s conditions imposed will remain as part of the deed restrictions. If the current landowners decide to sell the property the new owners will need to be notified and understand that they will need to abide by the recommendations set forth by the Board in this action. In the event the regeneration of the hala trees do not take place the landowner will be responsible for the restoration.

Deputy Attorney General Jay Paige informed the Board he was unaware of violations being transferred to the new landowner upon the completion of the sale of a parcel. But he pointed out there may be a way to have language drawn up which would run with the land.

Sam King attorney for Ms. Waters appeared before the Board with Mrs. Waters. Mr. King made it clear for the record that the cutting of the hala trees was not done intentionally. Mrs. King hired a contractor to clear the area and he went way beyond what he was authorized to do. Mr. King showed photos of hala seedlings that have regenerated. In closing, Mr. King acknowledged his clients responsibility for the cutting of the hala trees but due to the fact that it was not intentional he asked the Board to consider reducing her fines.

The Board questioned Mr. Lemmo as to how arrived at a figure of \$300 per tree. He indicated the amount was reduced to \$300 per tree because of three factors: the cutting was not systematic; the trees were not sold for profit; and the hala trees will regenerate much quicker than koa trees.

Christine Waters came forward to provide testimony. She started off by telling the Board she was extremely upset by the cutting of the hala trees. She communicated the gentleman she hired to clear the brush that blocked the path to the beach went beyond his instructions and cut the hala trees. She also added that the day the contractor came to cut the trees was on a day Mrs. Waters were not allowed to be on the property. Mrs. Waters conveyed her apologies to the Board.

The Board amended the Recommendation Section as follows.

- 1. That Mrs. Waters violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in fifty-five (55) instances by failing to obtain the appropriate approvals for unauthorized removal of fifty-five (55) Hala trees [~~and the unauthorized construction of the beach house structure, of which Mrs. Waters is fifty percent responsible on the subject parcel within the Conservation District~~]. Mrs. Waters is fined a total of [~~\$17,500~~] \$16,500;**
- 2. That Mr. Waters violated the Provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one (1) instance by failing to obtain the appropriate approvals for the unauthorized construction of the beach house structure, of which Mr. Waters is fifty percent responsible for on the subject parcel within the Conservation District. Mr. Waters is fined \$1,000. Mr. Waters is also fined \$1,000.**
- 3. Mrs. Waters shall submit bi-annual reports to the Office of Conservation and Coastal Lands starting from the date of the Board of Land and Natural Resource's decision, and for a period of [~~five (5) years~~] two (2) years to monitor the re-growth of the Hala forest.**

4. **The landowner shall provide documentation (i.e. book/page document number0 that this enforcement action and conditions herein have been placed in recordable form as a part of the deed instrument. Proof of this recordation shall be provided to the Office of Conservation and Coastal Lands within sixty (60) days of the date of the Board action;**
5. **The Board instructed staff to work out an acceptable payment plan for the remittance of the fine. If an acceptable payment plan cannot be worked out, then condition four (4) of the Board action shall be the default timeframe.**

Unanimously approved as amended (Johns/McCrory).

- Item D-1: Rescind Prior Board Action – Granting Term Non-Exclusive Easement to Silang Investment, LLC, for Tile Wall and Electrical Meter Purposes; Honolulu, Oahu, TMK: (1) 2-7-008: por. 002.**
- Item D-2: Consent to Sublease General Lease No. S-4302, Yamada Transfer, Inc., Lessee, to Jack’s Tours, Inc., Sublessee, Waiakea, South Hilo, TMK: (3) 2-2-37:89.**
- Item D-3: Issuance of Right-of-Entry to the United States of America, for Purposes of Environmental Investigations, Revocable Permit No. 7242, Governor’s Executive Order 3726, Heeia, Koolaupoko, Oahu, TMK: (1) 4-2-010:001 & 004.**
- Item D-4: Quitclaim of State’s Interests, if Any, in Queen Emma Road to the City and County of Honolulu, Honolulu, Oahu, TMK: (1) 2-1-18.**
- Item D-6: Grant of Perpetual, Non-Exclusive Easement to William Koa Hodgins for Access and Utility Purposes together with Immediate Right-of-Entry for Construction Purposes, Honopou, HamakuAloa, Makawao, Maui, TMK: (2) 2-9-001:018 (Por.) and 2-9-003:Pors. 016, 017, 020 and 039.**
- Item D-7: Issuance of Revocable Permit to Dean H. and Nicol U. Nonaka, por. Hanapepe Valley, Waimea, Kauai, TMK: (4) 1-9-1:2 and 1-9-2:2.**
- Item D-10: Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Reserve System, Mokuleia, Waialua, Oahu, TMK: (1) 6-7-003:021.**

Unanimously approved as submitted (Johns/Yamamura).

- Item D-8: Re-Submittal – Cancellation of Revocable Permit No. S-4110 to Yoshiko Kagawa and Issuance of Revocable Permit to Mary A. Kagawa-Walker, Lot 10-B, Block D, Waimea Town Lots, Waimea, Kauai, TMK: 1-6-4:15.**

The Board amended the Recommendation Section by amending subparagraph 2.d. to read as follows:

“2.d. The residential and home business improvements existing on the property shall not be leased nor rented out and these uses shall only be by permittee.”

Unanimously approved as amended (Johns/Yamamura).

Item F-1: Request for Approval to Enter into New Contract with the University of Hawaii (UH), Pacific Cooperative Services Unit (PCSU), for the Period of August 2004 through May 2005 to Develop a Statewide Aquatic Wildlife Conservation Strategy.

Unanimously approved as submitted (Johns/Yamamura).

Item L-3: Approval of Award of Construction Contract – Job No. J00CF70A, Sand Island State Recreation Area ADA Barrier Removal, Honolulu, Oahu, Hawaii.

Member Yamamura questioned staff as to why the low bid (roughly \$200,000 less) was disqualified due to a technicality that did not relate to expending an additional \$200,000. He wondered if there was a way the State could save that additional \$200,000. Andrew Monden, Engineer with the Engineering Department informed the Board the low bidder was disqualified because their proposal submitted was incomplete with the first page missing. Mr. Monden also pointed out the completion date of the project was indicated on the first page and no other page. He also pointed out the 180 day completion deadline was stated in the bid proposal. The Board questioned whether they had the authority to decide what constitutes a complete bid proposal. The Board asked staff to consult with the Attorney General's office analysis of what the Board options are.

Motion to Defer

Unanimously approved to defer (Johns/Yamamura).

Item L-2: Approval for Award of Construction Contract – Job No. J00CF59A, Puua Kaa State Wayside ADA Barrier Removal, Maui Hawaii.

Member Inouye questioned the awarding of the contract other than to the low bidder. Staff's submittal pointed out the winning bidder bid was \$110,000 more than the low bidder. The Board had concern because the low bidder was disqualified because their sub-contractor violated HRS Chapter 3-122-13e which stated “a contractor, paid by the State, for services to develop or prepare specifications or work statements shall be precluded from submitting an offer or receiving a contract for that particular solicitation.” Mr. Monden indicated the bids need to be awarded by June 30, 2004. Still concerned about the need to save the State some money, the Board requested the item be deferred in order to consult with the Attorney General.

Motion to Defer

Unanimously approved to Defer (Johns/Martyn).

**Item L-1: Approval for Award of Construction Contract – Job No. F57B620A,
Construct Kam Mon Store, Kahana Valley State Park, Oahu.**

**Item L-4: Approval for Award of Construction Contract – Job No. J00CF25A,
Wainapanapa State Park ADA Barrier Removal, Hana, Maui, Hawaii.**

Unanimously approved as submitted (Johns/Yamamura).

There being no further business, Chairperson Young adjourned the meeting at 1:30 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources